

FUNDING AGREEMENT  
BETWEEN  
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
AND  
CITY OF SUNNYVALE

PROJECT NUMBER

**04R48**

This Agreement is made and entered into between the City of Sunnyvale, hereinafter referred to as "Project Sponsor," and the Bay Area Air Quality Management District, hereinafter referred to as the "Air District."

SECTION I

RECITALS:

- 1) Air District is authorized to administer the Transportation Fund for Clean Air (TFCA) pursuant to California Health and Safety Code Sections 44223 and 44225, which allows the Air District to levy a fee on motor vehicles registered within its jurisdiction and to use the funds generated to implement projects and programs to reduce air pollution from motor vehicles.
- 2) California Health and Safety Code Section 44241 requires that TFCA funds be allocated to public agencies within the Air District's jurisdiction and that TFCA funds be used only for specified eligible transportation control measures and mobile source measures included in the latest version of any plans adopted in accordance with California Health and Safety Code Sections 40233, 40717, and 40919 for the California and federal ambient air quality standards.
- 3) Air District and Project Sponsor, a public agency in Air District's jurisdiction, desire to enter into this Funding Agreement (Agreement) to implement an eligible transportation control or mobile source measure (Project) to improve air quality in the San Francisco Bay Area Air Basin.

NOW, THEREFORE, the parties agree as follows:

SECTION II

PROJECT SPONSOR OBLIGATIONS:

- 1) Project Sponsor will implement the Project in accordance with this Agreement and Attachment A, Project Specific Information; Attachment B, Project Description; and Attachment C, Monitoring of Project Performance, which are hereby incorporated into this Agreement.
- 2) Project Sponsor will complete the Project in accordance with the budget described in Attachment A and the following conditions:
  - A. The Air District's funding obligation under this Agreement is limited to the "Total TFCA Regional Funds Awarded" as specified in Attachment A. Any Project cost overruns are the sole responsibility of the Project Sponsor.
  - B. In the event that the "Total Project Cost" is less than the amount listed on Attachment A, the Air District may reduce the "Total TFCA Regional Funds Awarded" to the Project. Any reduction in TFCA funding will maintain the percentage, listed on Attachment A, of "Total TFCA Regional Funds Awarded" to "Total Project Cost".
  - C. Only those allowable Project costs incurred after the "Air District Approval Date" as specified in Attachment A, and up to the completion or termination of the Project, whichever occurs first, are eligible to receive TFCA funds.

- D. Project Sponsor will contribute or expend those "Matching Funds," if any, as specified in Attachment A. In the event the specified "Matching Funds" are to be contributed by a third party and the Project Sponsor does not receive all such funds, the Air District reserves the right to terminate this Agreement in whole or in part, or renegotiate the terms and conditions.
  - E. If "TFCA Administrative Costs" are included in the "TFCA Line Item Project Budget" in Attachment A, Project Sponsor will not use more than five (5) percent of the "Total TFCA Regional Funds Awarded" for allowable costs incurred in the administration of the Project.
  - F. If the Project Sponsor removes any capital equipment, purchased with TFCA funds under this Agreement, from operation within the "Project Useful Life" as specified in Attachment B, the Project Sponsor will return funds in proportion to the percentage of TFCA funds originally used to purchase the capital equipment minus depreciation within thirty (30) days of removing the capital equipment from operation. In the event the Project Sponsor transfers the capital equipment that has been removed from operation to another use within the Air District's jurisdiction, with the Air District's approval, this provision may not apply.
  - G. If the Project Sponsor sells any capital equipment purchased with TFCA funds under this Agreement within the "Project Useful Life", as specified in Attachment B, the Project Sponsor will return the funds realized from the sale in proportion to the percentage of TFCA funds originally used to purchase the capital equipment within thirty (30) days of the sale.
- 3) Project Sponsor will submit invoices to the Air District for reimbursement of eligible Project costs and expenses consistent with the budget and schedule contained in Attachments A and B, respectively in a form acceptable to the Air District. Invoices will include a summary sheet specifying the project number; time period for the invoice; itemized staff charges to the Project, if any; itemized payments to vendors, consultants, or contractors and total funds being requested for the invoice period. Each invoice will also include detailed supporting documentation which will include copies of time sheets documenting hourly labor costs incurred in the implementation of the Project, copies of invoices from vendors, consultants, or contractors or an explanation of the goods or services provided for the Project. Project Sponsor may establish an alternative method approved in advance by the Air District to document staff costs charged to the Project.
- If invoices include "TFCA Administrative Costs", the Project Sponsor must provide supporting documentation to show how the costs were accrued. This shall include the date hours were accrued, employees' job titles, employees' hourly pay rates, hours worked, task being charged, and total charges.
- Project Sponsor must submit the final invoice for payment no later than ninety (90) days after the submission of the Final Report as required by Attachment C.
- 4) Project Sponsor will keep all necessary Project records to document Project activities and performance, including documentation of expenses and charges to support invoices submitted to the Air District and other Project reporting requirements as described in Attachment C.
  - 5) Project Sponsor will allow Air District or its authorized representatives to inspect, audit, and make copies of any Project records related to the performance of this Agreement. Project Sponsor will keep Project records in one central location for a period of three (3) years after the Air District's final payment of an approved final invoice as required by Section II.3 above.
  - 6) Project Sponsor will submit all reports set forth in Attachment C to the Air District by the specified due dates. In the event that a report other than the Final Report is not received, the Air District reserves the right to withhold payment of invoices until the appropriate report is submitted to the Air District. The District will retain fifteen (15) percent of the "Total TFCA Regional Funds Awarded" until the Air District accepts the Final Report as required by Attachment C.

- 7) Project Sponsor will acknowledge the Air District as a funding source and will use or display the approved TFCA logo so that it is visible to the public:
  - A. On any motor vehicles leased or purchased with TFCA funds, or on any other capital property purchased with TFCA funds.
  - B. On any printed or electronic material associated with the Project that is distributed to the public. Printed material includes Project related schedules, brochures, handbooks, or promotional material. Electronic material includes Project related web sites, electric signs, or e-mail broadcasts.
  - C. In any Project related media events, articles, news releases or other publicity materials.
- 8) Project Sponsor will place in the public domain any software, written document, intellectual property, process, technique, or product developed with TFCA funds as part of the Project.
- 9) Project Sponsor will monitor the operational status of the capital equipment or services purchased or funded under this Agreement for the "Project Useful Life", as listed in Attachment B. In the event there is a change in the operational status of the capital equipment or services under this Agreement, the Project Sponsor will notify the Air District, in writing, within thirty (30) days of the change in operational status. This may include the sale of capital equipment to a new owner, the transfer of capital equipment to a new location, or the discontinuance of services or use of capital equipment on the Project. Project Sponsor will be responsible for any applicable refunds under Section II.2.F and G.

### SECTION III

#### AIR DISTRICT OBLIGATIONS:

- 1) Air District will provide TFCA funds not to exceed the "Total TFCA Regional Funds Awarded" for this Project as listed in Attachment A.
- 2) Air District will endeavor to pay undisputed amounts of approved invoices within thirty (30) calendar days of receipt.
- 3) The Air District will provide timely notice prior to conducting an audit.
- 4) The Air District will provide a copy of any fiscal audits of the Project as specified in California Health and Safety Code Section 44242.
- 5) The Air District will provide a copy of its approved TFCA logo.

### SECTION IV

#### GENERAL PROVISIONS:

- 1) Term: This Agreement will remain in effect for three (3) years after 1) the Air District's final payment after acceptance of the Final Report, or 2) the "Project Useful Life" as specified in Attachment B, whichever is longer, unless terminated as provided below.
- 2) Termination: Either party may terminate this Agreement for convenience at any time by giving thirty (30) days written notice of termination to the other party. Upon receiving notice of termination, Project Sponsor will immediately cease further expenditure of TFCA funds received under this Agreement. The Air District will reimburse Project Sponsor for qualifying expenditures on the Project made until the effective date of the termination.

The Air District may terminate this Agreement for default upon giving ten (10) days written notice (or such other period of time authorized in writing by the Air District) of such default to Project Sponsor and Project Sponsor does not cure such default. The Air District will reimburse Project Sponsor for qualifying expenditures in full conformance with this Agreement made until the effective date of the termination.

- 3) Early Termination: This Agreement may be terminated prior to completion of the term period upon any of the following circumstances:
- A. The heavy-duty vehicles or associated capital equipment funded under this Agreement become inoperable through mechanical failure of components or systems directly related to the fuel technology being utilized, and such failure is not caused by Project Sponsor's negligence, misuse, or malfeasance.
  - B. Project Sponsor shall submit written documentation supporting any basis for early termination for the approval of the Air District.

Reimbursement for Early Termination: Project Sponsor is obligated through this Agreement to acquire and operate capital equipment funded under this Agreement as well as to provide periodic reports to the Air District. Should Project Sponsor desire to terminate this Agreement prior to the end date for reasons other than those stated in Item 3.A, Project Sponsor shall reimburse the Air District for a prorated share of the funds provided under this Agreement. The prorated share for which Project Sponsor shall be liable shall be 100% if the termination occurs within one (1) year of project implementation; 80% if termination occurs between years one (1) and two (2); 60% between years two (2) and three (3); 40% between years three (3) and four (4); 20% between years four (4) and five (5); and 0% after year five (5). The reimbursable amount shall be paid to the Air District within sixty (60) calendar days of the early termination date. Project Sponsor shall not be responsible for any reimbursement to the Air District if termination results from one or more of the reasons set forth in Item 2. Nothing in this Item entitles Project Sponsor to payment in the event of breach.

- 4) Indemnity: Project Sponsor will indemnify and hold harmless the Air District, its officers, employees, agents, representatives, and successors-in-interest against any and all claims, suits or actions arising out of an act or omission of the Project Sponsor or its employees, subcontractors or agents in the performance of this Agreement, except to the extent such claim, suit or action arises out of the sole negligence or willful misconduct of the Air District. Project Sponsor will cause any third party who owns, operates or controls the motor vehicle(s) purchased with TFCA funds under this Agreement to indemnify the Air District in accordance with this provision. This indemnification will survive expiration or termination of this Agreement.

Air District shall indemnify and hold harmless Project Sponsor its officers, employees, agents, and successors-in-interest against any and all claims, suits or actions arising out of a negligent act or omission by Air District in the performance of its duties under this Agreement.

- 5) Notices: Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal delivery service or first class mail, to the addressees set forth on Attachment A, or to such addressees which may be specified in writing by the parties.
- 6) Contacts: The persons listed as Contacts in Attachment A will be the first point of contact and act as the liaisons between the Air District and Project Sponsor with regards to the day-to-day activities of the Project. All reports and correspondence are to be addressed to the specified Contacts.
- 7) Project Number: All correspondence shall reference the "Project Number" specified in Attachment A.
- 8) Integration: This Agreement represents the entire Agreement of the parties with respect to the subject matter described in this Agreement, and no representation, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein.
- 9) Amendment: This Agreement may not be changed, modified, or rescinded except in writing and signed by the parties hereto. Any attempt to modify this Agreement orally will be void and of no effect. The Air District and Project Sponsor Contacts as specified in Attachment A may jointly authorize, in writing, any minor schedule revisions, "TFCA Line Item Project Budget" revisions, or changes to the

Project scope of work. Any other amendments to this Agreement must be executed in writing by the signatories to this Agreement. Any change in Project scope of work must be approved by the Air District prior to implementation of the change by the Project Sponsor.

- 10) Independent Contractor: Project Sponsor and any party contracting with it renders its service under this Agreement as an independent contractor. None of the Project Sponsor's agents, subcontractors or employees shall be construed as agents or employees of the Air District. The legal relationship of any person performing services for the Project Sponsor will be solely between that person and the Project Sponsor. This paragraph does not apply to elected officials serving concurrently on the governing boards of both the Project Sponsor and Air District.
- 11) Assignment: This Agreement may not be assigned, transferred, or subcontracted by any party without the express written consent of the other party.
- 12) Severability: Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the invalid portion(s), reasonably be interpreted to give effect to the intentions of the parties.
- 13) Effective Date: The effective date of this Agreement is the date the Air District Executive Officer/APCO executes this Agreement.
- 14) General Compliance with Laws: The performance of this Agreement and the expenditure of TFCA funds received under this Agreement will be in accordance with all applicable provisions of local and state law.
- 15) Liquidated Damages: It is agreed by the parties that a violation of Section II.7 will result in damage to the Air District that is or will be impracticable to determine. It is therefore agreed that the Project Sponsor will be liable for up to ten percent (10%) of the "Total TFCA Regional Funds Awarded" for the Project as liquidated damages if the Project Sponsor does not cure a noticed violation of Section II.7 within thirty (30) days of such written notice from the Air District. The Air District may deduct such liquidated damage amounts from any amounts owed to the Project Sponsor.
- 16) Force Majeure: Neither the Air District nor Project Sponsor shall be liable or deemed to be in default for any delay or failure in performance under this Funding Agreement or interruption of services, directly or indirectly, from the acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Air District or Project Sponsor.
- 17) Governing Law: This Funding Agreement shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California.
- 18) Binding on Successors: All of the terms, provisions and conditions of this Funding Agreement will be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.
- 19) Attorneys' fees: If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover, in addition to all court costs, reasonable attorneys' fees.
- 20) Conflict of Interest: Project Sponsor warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 *et seq.* and 87100 *et seq.* during the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

SIGNATURES:

by: \_\_\_\_\_  
Amy Chan  
City Manager  
City of Sunnyvale

by: \_\_\_\_\_ Date: \_\_\_\_\_  
Jack P. Broadbent  
Executive Officer/APCO  
Bay Area Air Quality Management District

Approved as to legal form:

by: \_\_\_\_\_  
Legal Counsel  
  
City of Sunnyvale

by: \_\_\_\_\_  
Brian C. Bunker  
District Counsel  
Bay Area Air Quality Management District

**ATTACHMENT A**  
**PROJECT SPECIFIC INFORMATION**

[Note: The section numbers shown in parenthesis below refer to sections in the Funding Agreement.]

1. **Project Sponsor:** City of Sunnyvale
2. **Project Number (Section IV.6):** 04R48
3. **Total Project Cost (Section II.3):** \$163,200
4. **Matching Funds (Section II.2):** \$105,100
5. **Total TFCA Regional Funds Awarded (Section II.3, II.6, III.1, III.2):** \$58,100  
The Air District will fund 35.60% of the Total Project Cost, to a maximum of \$58,100
6. **TFCA Line Item Project Budget:** Eligible expenditures for Total TFCA Regional Funds Awarded include the listed line items, as follows:

<u>Line Item</u>	<u>Amount</u>
Hardware	\$ 48,000
Installation	\$ 98,880
Engineering and Design	<u>\$ 16,320</u>
Total	\$163,200

7. **Invoice and Payment Schedule (Section II.3, II.6, III.2):** The Project Sponsor shall submit to the Air District invoices for reimbursement as Project costs are incurred, but not more than once per calendar quarter.

**Final Invoice:** The final invoice for reimbursement of fifteen percent (15%) of the Total TFCA Regional Funds Awarded is to be submitted with the final report as listed in Attachment C.

Per Section II.6 of this Agreement, the Air District may withhold funds pending receipt of reports.

8. **Notices (Section IV.4):** Any written notice required is to be addressed to:

Project Sponsor:

Amy Chan  
City Manager  
City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Air District:

Jack P. Broadbent  
Executive Officer/APCO  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

**9. Contacts (Section IV.5):** Contact persons for day-to-day activities of the Project are:

Project Contact:

Jack Witthaus  
Transportation & Traffic Manager  
City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
jwitthaus@ci.sunnyvale.ca.us

Air District:

Karen Chi  
Environmental Planner  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109  
kchi@baaqmd.gov

**10. Air District Approval Date (Section II.2):** December 21, 2004

**11. Special Conditions (Section II.2, II.7, II.9):**

- A. The Project Sponsor shall install the TFCA decal on any signs purchased with TFCA funds.
- B. The Project Sponsor shall acknowledge the TFCA as a funding source in all promotional material related to the Project (e.g., press releases, brochures, schedules, etc.).



**ATTACHMENT B  
PROJECT DESCRIPTION**

The TFCA funding application dated June 30, 2004, as supplemented by the e-mail from Dieckmann Cogill dated September 27, 2004, is incorporated herein by this reference.

1. **Project Title:** In-Pavement Crosswalk Warning Lights.
2. **Project Useful Life:** Ten (10) years.
3. **Project Description:** Total TFCA Regional Funds awarded shall be used by the City of Sunnyvale to install solar-powered in-pavement crosswalk warning lights at three (3) critical unregulated intersections in the City of Sunnyvale. The lighted crosswalks will improve motorist awareness of pedestrians in the crosswalks. Improved pedestrian visibility will provide a safer pedestrian and bicycle crossing. Enhanced crossing environment will provide a better pedestrian and bicycle access to the neighboring commercial and activity centers, including VTA Fair Oaks Light Rail Station, Sunnyvale downtown area, and a school on Remington Drive.

The three (3) locations within the City of Sunnyvale for the in-pavement crosswalk warning lights are:

- Fair Oaks Avenue at Tasman Avenue,
- Washington Street at Murphy Avenue, and
- Remington Drive at Mango Drive.

4. **Project Schedule:**

<u>Milestone</u>	<u>Date</u>
Project Start Date	March 1, 2005
Design and PS&E Complete	October 1, 2005
Award Construction Contract	December 1, 2005
Construction Start	January 1, 2006
Construction Complete	December 1, 2006
Final report due date per Attachment C	December 1, 2007

5. **Project Goal:** The goal of this Project is to reduce on-road motor vehicle emissions by shifting trips from motor vehicles to walking, bicycling, and public transit. The mode shift will be accomplished by providing safe and comfortable environment for walking, bicycling, and accessing transit to the neighboring commercial zone and activity centers. The Project locations connect the residential and commercial areas to the VTA Fair Oaks Light Rail Station, Sunnyvale Downtown area, and a local school.

**ATTACHMENT C**  
**MONITORING OF PROJECT PERFORMANCE**

**1. Quarterly Reports (Section II.6):**

**Due Dates: April 15, 2005; July 15, 2005; October 15, 2005; January 15, 2006; April 15, 2006, July 15, 2006, October 15, 2006; January 15, 2007; and quarterly thereafter until the Construction is completed.**

The Project Sponsor shall submit brief quarterly reports to the Air District during implementation of the Project. Quarterly reports are required regardless of project activity. Quarterly reports shall summarize progress in Project implementation, describe any problems encountered, and note any potential need for changes in the Project implementation schedule. Quarterly reports shall be submitted based upon the format provided by the Air District.

**2. Final Report (Section II.6):**

**Due Date: December 1, 2007**

The final report shall include the following information in a format approved by the Air District:

- A. A count of pedestrian, bicycle, transit riders, and motor vehicles on each of the three (3) Project locations no more than three (3) months prior to start of construction and approximately one (1) year after completion of construction. The counting methodology, including the establishment of baseline traffic volumes, specific location of the counts, and dates and daily period of counts, shall be pre-approved by Air District staff. The post-construction counts to be conducted one (1) year after completion of construction shall be chosen to provide the most relevant comparison with the pre-Project count, considering seasonal variation, special events, and other factors.
- B. Photographs showing the nature of improvements, including photos of lighted crosswalks along the three Project locations.
- C. A brief narrative description of the Project.
- D. Documentation that TFCA decals have been placed on any signs installed with TFCA funds.
- E. Copies of any promotional materials, press releases, newsletter articles, or other media coverage regarding the Project.

- 3. Amendment (Section IV.9):** The Project Sponsor must submit in writing to the Air District Project Contact listed above any requests to revise the Project schedule, TFCA Line Item Project Budget, or scope of work. The Air District will approve or disapprove these requests in writing.